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p. 26. Among the prudentes it is necessary to distinguish, *from* Augustus, two classes * * *

p. 37. *From the moment that* one had the right to kill his enemy, *a fortiori* he has the right to spare him.

p. 144. We think *as* Dareste, that * * *

p. 207. It used to be a very debated question among Romanists *of knowing* if in the classical era * * *

p. 229. The debtor *re-became* possessor.

p. 244. The rent is due to the *naked owner*.

There are also many errata *e. g.*, *Orsuna* for *Osuna* (p. 20, n. 3), *perduellio* (for *perduellionis*) *damnatus* (p. 89).

Apart from these blemishes, the book is well arranged as to matter and clear in style. It summarizes admirably in Book I (pp. 1-34) the history of Roman law and of the agencies from which it emanated, and the paragraphing of the material is most helpful.

W. H. BUCKLER.

The German Empire. By BURT ESTES HOWARD. (New York: The Macmillan Company. 1906. Pp. viii, 449.)

Heretofore the extent of information in English available to students of the German constitution has been limited mainly to a brief account of the imperial constitution, a short chapter on the emperor, another chapter on the *Reichstag* and *Bundesrath* and possibly a reference to the judicial system. The student who desired anything more than a superficial account of the principal institutions of the German empire was compelled to have recourse to the German treatises. In no English work could be found more than a paragraph or two concerning the German judiciary, the law of German citizenship, the government of the *Reichsland*, methods of legislation, the financial system or the place of the army and navy in the constitutional system of Germany. The result was, due mainly to an altogether too general inability or disinclination of American students to read German, a lamentable want of serious study of German public law and political science on this side of the Atlantic. In the present work written by an American scholar, trained in a German university and apparently imbued with the spirit and methods of the German investigators, we have a treatise that will compare favorably with the standard briefer works of some of the best German commenta-

tors. It is based entirely on German sources, partly original and partly standard works of German writers, principally, but by no means exclusively, on the treatises of Laband, Zorn, Schulze, Arndt, Hänel and Meyer and the commentaries of Arndt and Seydel. It affords abundant evidence of wide and painstaking research and of unusual familiarity with the extensive literature of German public law and political science.

The German Empire deserves a more careful study by American publicists because of the solutions which it affords for the settlement of some of the most perplexing problems of a State having the federal form of government. Differing from the American republic in that it represents an attempt to combine the monarchical principle with the federal system and the principle of centralization in legislation with that of decentralization in administration, it nevertheless possesses in other particulars striking similarities. The problem of adjusting the relations between the central authority and the constituent units of the empire has been solved in a manner wholly original and unlike that followed in any other State having a dual system of government under a common sovereignty.

The main subjects treated in Dr. Howard's work are: The Founding of the Empire and the Constitutional Relations between it and the Individual States; the *Bundesrath*, the *Reichstag* and the Methods of Imperial Legislation; the Emperor; the Chancellor; Citizenship of the the Empire and of the States; the Judicial System; the Government of Alsace-Lorraine; the Imperial Financial System; and The Army and the Navy in so far as They are Imperial Institutions. His treatment of each of these subjects is, from the constitutional point of view, full, accurate and lucid. The author has a preëminently juristic bent of mind and in the treatment of his subject has followed closely the methods of the German juristic school of writers of which Laband and Zorn are among the best examples. He has a happy faculty for seeing institutions in their juridical relations and has succeeded well in giving them their proper constitutional setting in the German political system. On most controverted points, especially as regards federal relations, he follows the opinions of Laband. Sovereignty resides, according to him, not in the emperor, nor in the people, but in the totality of the States, *i. e.*, in the *Bundesrath*. The emperor, as such, is an authority not of residuary powers but of derivative powers and the presumption is always against any power claimed by him. Yet as emperor he has some of the elements

of a monarch as well as that of president. Altogether his position is unique among executives and it is, in fact, impossible to classify him. Dr. Howard's discussion of the constitutional position of the chancellor is clear and interesting. The only way to avoid misapprehension as to the real nature of this puzzling office, he correctly observes is to distinguish between its dual nature, *i. e.*, between the chancellor's position as a Prussian delegate to the *Bundesrath*, on the one hand, and his position as the emperor's only responsible minister and the highest imperial official on the other.

Whether his responsibility is legal or political as the author points out, is purely an academic question since there is no means of enforcing either.

Like all States having the federal system of government Germany has had to deal with the difficult problem of a dual citizenship, 'one local and the other national. Most of the German commentators following Laband recognize the existence of both an imperial citizenship and a State citizenship although a few, like Seydel, deny the existence of the former, and some, like Le Fur, reject the idea of the latter. Dr. Howard proves conclusively to a judicial mind the existence of a double citizenship, although not coördinate and independent, occupying distinct spheres, but that the relation is rather one of subordination and dependence one toward the other. Contrary to the American rule, State citizenship in Germany is primary, and imperial citizenship is secondary, that is, the latter is derived from the former and imperial citizenship is lost when State citizenship is lost. Nevertheless it is characteristic of the German conception of the importance of uniformity among the States, that the conditions governing the acquisition of State citizenship (and in consequence of imperial citizenship) should be regulated by imperial law. Contrary also to the rule prevailing in the American States, State citizenship is not lost by mere withdrawal from the jurisdiction of the State, nor acquired in another State by mere establishment of residence therein, but in each case there must be a formal act of renunciation or naturalization before an administrative authority. It is a matter of regret that Mr. Howard did not make use of his extensive knowledge of the law of American citizenship (see his *Amerikannische Bürgerrecht*) to illuminate his chapter on German citizenship though some of the comparisons which naturally suggest themselves between the German and American systems. A careful reading of his chapter will show that some of the weak spots in our

law as they have been brought to light in the recent report of the American citizenship commission (House Doc. No. 326-59th Cong., 2d Ses.) have been avoided in Germany by methods easily adaptable in America. Finally, it is to be noted that he has overlooked the imperial law of September 10, 1900, regulating the citizenship of foreigners as well as of natives who settle in the German protectorates.

Mr. Howard's chapters on the government of Alsace-Lorraine and the judicial system of Germany are both full and thorough and there is little in them to criticise. It may be observed, however, that in his discussion of judicial institutions he omits all reference to the various special courts (*besondere Gerichte*) both of the empire and of the States as well as of the administrative courts. Some account of the bar (*Rechtsanwaltschaft*) and the State attorneyship (*Staatsanwaltschaft*) certainly would not have been out of place. Likewise he might well have discussed the relation of the German judge to the State Constitution, the statutes and ordinances with a view to informing us as to his power to declare them null and void on the ground of formal defectiveness or of material inconsistency with a higher law. There is no reference in his extensive footnotes to Gneist's famous essay, entitled "*Soll der Richter über die Frage zu befinden haben ob ein Gesetz verfassungsmässig zu stände gekommen.*" Nor to the other literature of this interesting subject. Finally it does not clearly appear from his account that the *Gerichtsverfassungsgesetz* and other imperial laws relating to judicial organization and procedure apply only to the field of contentious jurisdiction and that the whole domain of voluntary jurisdiction is left entirely to the States to be exercised through such tribunals and according to such rules as they may prescribe.

As a whole there is little in Mr. Howard's book which merits anything but praise. It deserves to be studied by every student who is unable to read the German treatises yet who wishes to get the opinions of Laband and the other great German scholars on the controverted points of German public law. One or two minor errors need to be noted. "Schulze" and "Holtzendorff" are spelled "Schultze" and "Holzendorff" in a number of places. It is not clear what is meant by the "imperial" law of April, 1849 (pp. 7-8), since the empire was not founded until 1871. "Has," p. 5, line 11 from bottom of page, should be "had." The reference to the King of Prussia as "Kaiser of Germany" (p. 324) instead of "German Kaiser" is a slip that occurs once in the book.

J. W. GARNER.